

properly managed. The postmining land use for land that has been previously mined and not reclaimed shall be judged on the basis of the land use that existed prior to any mining: *Provided that*, if the land cannot be reclaimed to the land use that existed prior to any mining because of the previously mined condition, the postmining land use shall be judged on the basis of the highest and best use that can be achieved which is compatible with surrounding areas and does not require the disturbance of areas previously unaffected by mining.

(c) *Criteria for alternative postmining land uses.* Higher or better uses may be approved by the regulatory authority as alternative postmining land uses after consultation with the landowner or the land management agency having jurisdiction over the lands, if the proposed uses meet the following criteria:

(1) There is a reasonable likelihood for achievement of the use.

(2) The use does not present any actual or probable hazard to public health and safety, or threat of water diminution or pollution.

(3) The use will not—

(i) Be impractical or unreasonable;

(ii) Be inconsistent with applicable land use policies or plans;

(iii) Involve unreasonable delay in implementation; or

(iv) Cause or contribute to violation of Federal, State, or local law.

(d) *Approximate original contour: Criteria for variance.* Surface coal mining operations that meet the requirements of this paragraph may be conducted under a variance from the requirement to restore disturbed areas to their approximate original contour, if the following requirements are satisfied:

(1) The regulatory authority grants the variance under a permit issued in accordance with § 785.16 of this chapter.

(2) The alternative postmining land use requirements of paragraph (c) of this section are met.

(3) All applicable requirements of the Act and the regulatory program, other than the requirement to restore disturbed areas to their approximate original contour, are met.

(4) After consultation with the appropriate land use planning agencies, if any, the potential use is shown to con-

stitute an equal or better economic or public use.

(5) The proposed use is designed and certified by a qualified registered professional engineer in conformance with professional standards established to assure the stability, drainage, and configuration necessary for the intended use of the site.

(6) After approval, where required, of the appropriate State environmental agencies, the watershed of the permit and adjacent areas is shown to be improved.

(7) The highwall is completely backfilled with spoil material, in a manner which results in a static factor of safety of at least 1.3, using standard geotechnical analysis.

(8) Only the amount of spoil as is necessary to achieve the postmining land use, ensure the stability of spoil retained on the bench, and meet all other requirements of the Act and this chapter is placed off the mine bench. All spoil not retained on the bench shall be placed in accordance with §§ 817.71 through 817.74 of this chapter.

(9) The surface landowner of the permit area has knowingly requested, in writing, that a variance be granted, so as to render the land, after reclamation, suitable for an industrial, commercial, residential, or public use (including recreational facilities).

(10) Federal, State, and local government agencies with an interest in the proposed land use have an adequate period in which to review and comment on the proposed use.

[48 FR 33905, Sept. 1, 1983]

§ 817.150 Roads: General.

(a) *Road classification system.* (1) Each road, as defined in § 701.5 of this chapter, shall be classified as either a primary road or an ancillary road.

(2) A primary road is any road which is—

(i) Used for transporting coal or spoil;

(ii) Frequently used for access or other purposes for a period in excess of six months; or

(iii) To be retained for an approval postmining land use.

(3) An ancillary road is any road not classified as a primary road

(b) *Performance standards.* Each road shall be located, designed, constructed, reconstructed, used, maintained, and reclaimed so as to:

(1) Control or prevent erosion, siltation, and the air pollution attendant to erosion, including road dust and dust occurring on other exposed surfaces, by measures such as vegetating, watering, using chemical or other dust suppressants, or otherwise stabilizing all exposed surfaces in accordance with current, prudent engineering practices;

(2) Control or prevent damage to fish, wildlife, or other habitat and related environmental values;

(3) Control or prevent additional contributions of suspended solids to streamflow or runoff outside the permit area;

(4) Neither cause nor contribute to, directly or indirectly, the violation of State or Federal water quality standard applicable to receiving waters;

(5) Refrain from seriously altering the normal flow of water in streambeds or drainage channels;

(6) Prevent or control damage to public or private property, including the prevention or mitigation of adverse effects on lands within the boundaries of units of the National Park System, the National Wildlife Refuge System, the National System of Trails, the National Wilderness Preservation System, the Wild and Scenic Rivers System, including designated study rivers, and National Recreation Areas designated by Act of Congress; and

(7) Use nonacid- and nontoxic-forming substances in road surfacing.

(c) *Design and construction limits and establishment of design criteria.* To ensure environmental protection appropriate for their planned duration and use, including consideration of the type and size of equipment used, the design and construction or reconstruction of roads shall incorporate appropriate limits for grade, width, surface materials, surface drainage control, culvert placement, and culvert size, in accordance with current, prudent engineering practices, and any necessary design criteria established by the regulatory authority.

(d) *Location.* (1) No part of any road shall be located in the channel of an intermittent or perennial stream un-

less specifically approved by the regulatory authority in accordance with applicable §§ 817.41 through 817.43 and 817.57 of this chapter.

(2) Roads shall be located to minimize downstream sedimentation and flooding.

(e) *Maintenance.* (1) A road shall be maintained to meet the performance standards of this part and any additional criteria specified by the regulatory authority;

(2) A road damaged by a catastrophic event, such as a flood or earthquake, shall be repaired as soon as is practicable after the damage has occurred.

(f) *Reclamation.* A road not to be retained under an approved postmining land use shall be reclaimed in accordance with the approved reclamation plan as soon as practicable after it is no longer needed for mining and reclamation operations. This reclamation shall include:

(1) Closing the road to traffic;

(2) Removing all bridges and culverts unless approved as part of the postmining land use;

(3) Removing or otherwise disposing of road-surfacing materials that are incompatible with the postmining land use and revegetation requirements;

(4) Reshaping cut and fill slopes as necessary to be compatible with the postmining land use and to complement the natural drainage pattern of the surrounding terrain;

(5) Protecting the natural drainage patterns by installing dikes or cross drains as necessary to control surface runoff and erosion; and

(6) Scarifying or ripping the roadbed, replacing topsoil or substitute material and revegetating disturbed surfaces in accordance with §§ 817.22 and 817.111 through 817.116 of this chapter.

[53 FR 45213, Nov. 8, 1988]

§ 817.151 Primary roads.

Primary roads shall meet the requirements of § 817.150 and the additional requirements of this section.

(a) *Certification.* The construction or reconstruction of primary roads shall be certified in a report to the regulatory authority by a qualified registered professional engineer, or in any State which authorizes land surveyors